

ISSUED: September 20, 2002

D.T.E. 02-13-D

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for the year 2000 by March 31, 2001 and to pay statutory forfeitures.

In the Matter of

Boston Telecommunications Services Corp.

D.T.E. 02-13-5

APPEARANCES: Robinson B. Nunez
Boston Telecommunication Services Corp.
140 Union Street
Lynn, Massachusetts 01901
Respondent

I. INTRODUCTION

The Department requires all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e. telecommunications services, to be registered by having an approved tariff on file with the Department as well as a current statement of business operations. Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98 (1994), at 12; see also G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31, by March 31 of the following year, in a format prescribed by the Department. G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11. Therefore, the deadline for filing annual returns for the year 2000 was March 31, 2001, absent any extension that the Department may grant for good cause. G.L. c. 159, § 32; G.L. c. 166, § 11.

Any telephone company that neglects to file the required annual return forfeits to the Commonwealth five dollars per day for the first fifteen days that the neglect continues, ten dollars per day for the next fifteen days, and fifteen dollars per day for each day thereafter. G.L. c. 166, § 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in addition. Id. If, in the judgment of the Department, a common carrier neglects to make returns as required by law, the Department is obligated to present the facts to the Attorney General for action. G.L. c. 159, § 39.

A significant number of telephone companies failed to file annual returns on a timely basis and pay statutory forfeitures to the Commonwealth for the year 2000. Therefore, on April 8, 2002, the Department opened separate investigations into the failure by each of these companies to file annual returns or to pay the statutory forfeiture.

II. PROCEDURAL HISTORY

The Department opened an investigation regarding Boston Telecommunications Services Corp. ("Boston Telecom"), docketed as D.T.E. 02-13-5. Pursuant to notice duly issued, the Department conducted a public hearing and an evidentiary hearing on April 29, 2002. Boston Telecom sponsored the testimony of Robinson B. Nunez, president and director of operations for the company. The evidentiary record contains three exhibits and one record request response. Boston Telecom filed its annual return for the year 2000 late, but did not pay the statutory forfeiture to the Commonwealth for late filing, pursuant to G.L. c. 166, § 12.

III. ANALYSIS

Boston Telecom is a registered common carrier of telecommunications services because it has an approved tariff and statement of business operations on file with the Department. D.P.U. 93-98, at 12. Therefore, it was obligated to file its annual return for the year 2000 by March 31, 2001. G.L. c. 159, § 32; G.L. c. 166, § 11. Boston Telecom filed its annual return for the year 2000, as a record request response, well after March 31, 2001. Boston Telecom stated that although the company did file an annual report with the Secretary of the Commonwealth of Massachusetts, the company apparently was unaware that it had an obligation to file a separate annual return with the Department (Tr. at 3-4, 7).

Every telephone company that files a tariff and a statement of business operations with the Department makes a representation that it has the managerial, technical, operational, and financial ability to comply with statutory requirements and the Department's tariff review process, and the Department deems a registered company capable unless it specifically finds otherwise. See D.P.U. 93-98, at 12. Thus, Boston Telecommunications Services' claim of its lack of knowledge of the filing requirement is inadequate to relieve it of its duty to file a timely annual return. Therefore, the Department finds that Boston Telecom neglected to file its annual return by March 31, 2001, and that the statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies, calculated up to the date that the company filed.¹ The Department finds, however, that the additional \$500 forfeiture for unreasonable refusal or neglect to file is not applicable because Boston Telecom filed its return. G.L. c. 166, § 12.

IV. ORDER

After notice, opportunity for comment, and due consideration, it is

¹ Boston Telecom filed on May 2, 2002.

ORDERED that regarding the matter of Boston Telecommunications Services Corp., docketed as D.T.E. 02-13-5, Boston Telecommunications Services shall remit payment in the amount of \$5,715, payable to the Commonwealth of Massachusetts, no later than September 30, 2002; and it is

By Order of the Department,

/s
Paul B. Vasington, Chairman

/s
James Connelly, Commissioner

/s
W. Robert Keating, Commissioner

/s
Eugene J. Sullivan, Jr., Commissioner

/s
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).